

BEFORE THE
ILLINOIS COMMERCE COMMISSION

In the Matter of:)	
)	
Petition for Arbitration of XO)	
ILLINOIS, INC. Of an Amendment to)	Docket No. 04-0371
an Interconnection Agreement with)	
SBC ILLINOIS, INC. Pursuant to)	
Section 252b) of the Communications)	
Act of 1934, as Amended)	

STAFF OF THE ILLINOIS COMMERCE COMMISSION'S REPLY
TO XO ILLINOIS, INC.'S RESPONSE
AND REQUEST FOR RECONSIDERATION

The Staff of the Illinois Commerce Commission, (hereafter "the Staff") pursuant to the Administrative Law Judge's Ruling of June 3, 2004, and in reply to XO Illinois, Inc.'s Response and Request for Reconsideration, states as follows:

1. On June 3, 2004, the Administrative Law Judge (hereafter "ALJ") issued a ruling that provided, in relevant part, as follows:

The XO issues based on "pre-existing obligations" are not clearly delineated from those issues, if any, associated with the [Triennial Review Order]. XO Issue 1 does concern the "routine network modifications" that XO cites (above) as an example of a "pre-existing" obligation. Issue 1 is therefore not arbitrable. Other XO Issues (3 and 6) are based, in part, on "ICC rules" which are not part of, and presumably predate, the TRO. Nonetheless, it may be that some or all of XO Issues 2-7 have sufficient connection [to] legal changes in the TRO to be within the ambit of XO's negotiation request. Accordingly, **at or before the close of business on June 8, 2004**, XO shall identify with specificity which of XO Issues 2-7 meet that test, and XO shall explain fully why that is so. SBC and Staff may reply to XO's declaration **on or before the close of business on June 11, 2004**. An additional Administrative Law Judge's ruling regarding dismissal of those issues will follow.

ALJ Ruling at 8

2. XO duly filed its response on June 8, 2004. See XO Response. It asserts, generally, that all of the issues it submitted for arbitration are sufficiently connected to legal changes resulting from the Triennial Review Order to be within the ambit of XO's negotiation request. XO Response.

3. In Staff's view, XO has demonstrated such a nexus with respect to XO Issues 2 through 7.

4. With respect to XO Issue 1, the Staff notes that XO has shown a nexus between this issue and the *Triennial Review Order*. However, the *Triennial Review Order* – and the rule promulgated thereunder – appears to do little but memorialize in detail a pre-existing legal obligation. Whether this issue stems from an assertion by SBC that the *Triennial Review Order's* discussion of this issue amounts to a change of law within the meaning of the parties' interconnection agreement is a question that Staff is unable to answer at this point.

5. Additionally, the Staff notes that the sequence of events that gave rise to this arbitration is certain to replay itself with respect to interconnection agreements between SBC and other CLECs. The mandate issued in U.S. Telecom Assoc. v FCC, 359 F.3d 554, 2004 U.S. App. LEXIS 3960 (D.C. Cir. 2004) (hereafter "USTA II") will go into effect on or about June 15, 2004. The Staff is informed and believes that, on or shortly after that date, SBC will send notice to many or all of the CLECs with which it has concluded interconnection agreements that it will seek negotiation based upon a change of law, namely the *USTA II* decision.

6. Accordingly, it seems certain to the Staff that the issues presented in this proceeding are far from unique, and will be the subject of several – perhaps a good many – other requests for arbitration in the coming days. If the Commission is to resolve these in a consistent, timely manner, it will be well advised to do so in one consolidated proceeding. The Staff intends to recommend to the Commission that it consider such a proceeding.

WHEREFORE, the Staff of the Illinois Commerce Commission respectfully requests that its recommendations be adopted in their entirety consistent with the arguments set forth herein.

Respectfully submitted,

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